

UNITED STATES COURT OF APPEALS

OCT 07 2005

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

CENEX HARVEST STATES  
COOPERATIVES,

Plaintiff - Appellant,

and

CENEX SUPPLY AND MARKETING,  
an operating division of Cenex Harvest  
States Cooperatives, a Minnesota  
cooperative association,

Plaintiff,

v.

U. S. BANK N.A.; DENNIS K.  
STEFFLER, husband; DIANE  
STEFFLER, wife; TRAVIS STEFFLER,  
husband; MARY STEFFLER, wife,

Defendants - Appellees.

No. 04-35347

D.C. No. CV-02-03076-EFS

ORDER

CENEX HARVEST STATES  
COOPERATIVES; CENEX SUPPLY  
AND MARKETING, an operating  
division of Cenex Harvest States  
Cooperatives, a Minnesota cooperative  
association,

Plaintiffs - Appellees,

v.

No. 04-35348

D.C. No. CV-02-03076-EFS

U. S. BANK N.A.,

Defendant - Appellant,

and

DENNIS K. STEFFLER, husband;  
DIANE STEFFLER, wife; TRAVIS  
STEFFLER, husband; MARY  
STEFFLER, wife,

Defendants.

Before: HUG, PAEZ, and CALLAHAN, Circuit Judges.

The memorandum disposition filed July 28, 2005, is amended as follows. At page 3, lines 17-19, the final two sentences of the paragraph are replaced with the following:

Under the U.C.C., unless the context otherwise requires, “notice” of a fact requires actual knowledge, receipt of notification, or reason to know of the fact under the circumstances. Wash. Rev. Code § 62A.1-201(25) (1998). Normally, the “context” of secured transactions might “otherwise require” that a party be charged with constructive notice of a termination statement, as the Bank urges here. In the specific “context” of this case, however—where the Bank represented to Cenex that its interest was superior, inducing Cenex to protect its own interest by entering into the standback agreement and endorsing the crop proceeds over to the Bank—it would be inequitable to charge Cenex with constructive notice of the termination statement. *See* Wash. Rev. Code § 62A.1-103 (1998) (principles of equity supplement U.C.C. provisions unless specifically displaced). Therefore, Cenex did not intentionally and knowingly waive its

superior right to the crop proceeds. *See Cent. Wash. Bank*, 779 P.2d at 701.

With this amendment, the panel has voted to deny the petition for rehearing. Judges Paez and Callahan have voted to deny the suggestion for rehearing en banc and Judge Hug so recommends.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing and suggestion for rehearing en banc are DENIED. No further petitions shall be entertained.